

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

95
O.A.NO..... of 1998.

DATE OF DECISION..... 27-4-2000...

Sri Bipul Saikia

PETITIONER(S)

Sri M.Chanda, Mrs N.D.Goswami.

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Sri B.C.Pathak, Addl.C.G.S.C.

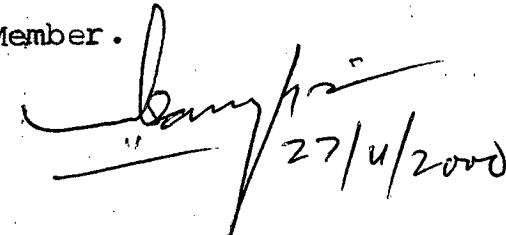
ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE SRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Administrative Member.


27/4/2000

X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 95 of 1998.

Date of Order : This the 27th Day of April, 2000.

The Hon'ble Mr G.L.Sanglyine, Administrative Member.

Sri Bipul Saikia
Son of Late Giridhani Saikia,
Village-Chiratiagaon,
Dist. Jorhat (Assam). . . . Applicant

By Advocate Sri M.Chanda, Smt.N.D.Goswami.

- Versus -

1. Union of India,
represented by Secretary,
Ministry of Home Affairs,
Govt. of India,
New Delhi.
2. The Registrar General of India,
Ministry of Home Affairs,
New Delhi.
3. The Director of Census Operation,
G.S.Road, Ulubari,
Guwahati. . . . Respondents.

By Advocate Sri B.C.Pathak, Addl.C.G.S.C.

O R D E R

G.L.SANGLYINE, ADMN. MEMBER,

The service of the applicant was terminated with effect from 20.5.1992 by order dated 20.5.1992 and was confirmed by appellate order dated 23.10.1992. The applicant submitted Original Application No.142 of 1993 against the aforesaid orders of the respondents. This O.A. was disposed of by this Tribunal by order dated 8.4.1997. After considering the submissions in the O.A. the Tribunal held :-

"From the impugned Annexure H order it is clear that the service of the applicant was terminated by way of punishment. In view of the decision of Apex Court in Parshotam Lal Dhingra v. Union of India 1958 SCC and subsequent decisions we have no hesitation to say that the applicant though a temporary servant was entitled to the protection under Article 311(2) but unfortunately authority did not consider it necessary to hold an enquiry as contemplated under Article 311(2)."

The Tribunal also found that the appellate order was not a speaking order and the above aspect of the matter was not at all considered by the authority while rejecting the representation of the applicant. The Tribunal therefore set aside the impugned orders Annexure-H and J and deemed the applicant to be in service.

2. Subsequent to the above mentioned order of the Tribunal the applicant was re-instated to the post of Chowkidar with effect from 21.5.1992 until further orders vide order dated 3.11.1997 issued by the Joint Director of Census Operation, Assam, Guwahati. According to the applicant he had made representation to allow him to join duty earlier. After the reinstatement, according to him, he had approached the respondents for payment of arrear pay and allowances with effect from 21.5.1992 to the date of his reinstatement. No payment was made. However, he was paid a sum of Rs. 63,042/- less Rs. 3515/- being the amount to be deposited in his GPF Account as arrear of pay and allowance consequent to the revision of pay scale for the period from 1.1.1996 to 30.4.1997 after obtaining an undertaking from him. On 1.5.1998 the respondents however, issued an order directing the applicant to refund the entire amount of Rs.63042/- drawn by him within 20.5.1998 positively. This order was issued consequent to an objection to the payment of the aforesaid amount by the Registrar General, India on the ground that the applicant is not entitled to the payment of arrear of pay and allowances for the period for which he did not work. This view was taken based on Government of India's order under Rule 4(3)(i) and 3(ii) under FR 54-B which, according to the respondents, ~~the rules~~ specify that payment of arrears of pay and allowances is to be

determined subject to the directions, if any, in the decree of the Court regarding payment of such arrears. In other words the payment was refused by applying the proviso to the aforesaid rule 4(3)(i) and 3(ii). Faced with the situation the applicant has submitted this application praying for setting aside the above impugned order dated 1.5.1998 and to allow him payment of arrear of pay and allowances from the date of termination of service to the date he was allowed to join duty on reinstatement. The respondents have opposed the application and submitted written statement.

3. Learned counsel Mr M.Chanda appeared for the applicant and learned Addl.C.G.S.C Mr B.C.Pathak for the respondents. They have been heard.

4. The facts in short are :

Having set aside the impugned order of termination of service of the applicant dated 20.5.1992 and the Appellate Order dated 23.10.1992 on the ground that necessary enquiry under Article 311(ii) of the Constitution of India was not conducted before termination of the service of the applicant, the Tribunal had directed that the applicant is deemed to be in service. The respondents had reinstated the applicant to his service but refused to pay arrear of pay and alloawance for the period he did not work, i.e. with effect from 21.5.1992 to the date of reinstatement on the ground that he was not entitled to such payment as per the Government of India's order under Rule (4) 3(i) and 3(ii) under FR 54-B as in the order of the Tribunal dated 8.4.1997 in O.A.242/93 there is no direction regarding payment of such arrears. For convenience the relevant portion of the order of the Government of India stated above is reproduced below :

"(4) Regulation of pay on reinstatement on grounds of equity or court judgment, etc.- The following questions in connection with the reinstatement of dismissed/removed/ discharged Government servants or the Government servants whose service had been terminated, came up for consideration:-

(1) Whether before the Government of India decide to reinstate an individual on grounds of equity, concurrence of the Ministry should be obtained for payment of pay and allowances for the intervening period; or whether the administrative authorities, could themselves, after following the prescribed procedure, e.g., consultation with the Union Public Service Commission, etc., reinstate the person and sanction payment of pay and allowances under F.R.54.

(2) Whether in cases of reinstatement on the ground of dismissal/removal/discharge from or termination of service being held by a Court of Law or by an appellate/reviewing authority to have been made without following the procedure required under Article 311 of the Constitution, payment of full pay and allowances for the intervening period is automatic and compulsory.

2. As regards question (1) above, it has been decided that the concurrence of the Ministry of Finance will not be necessary for reinstating a Government servant if the authority which reinstates the Government servant is competent to appoint him. The question as to what pay and allowances should be allowed for the intervening period and whether or not the period should be treated as duty, will be dealt with under F.R.54.

3. Regarding question(2) stated in para.1 above, it has been decided that F.R.54 is inapplicable in cases where dismissal/removal/ discharge from or termination of service is held by a Court of Law or by an appellate/ reviewing authority to have been without following the procedure required under Article 311 of the Constitution. In such cases-

(i) if it is decided to hold a further inquiry and thus deem the Government servant to have been placed under suspension from the date of dismissal/removal/discharge/termination under Rule 12(3) or 12(4) of Central Civil Services (Classification, Control and Appeal) Rules, 1957 or a corresponding rule, the Government servant will be paid the subsistence allowance from the date he is deemed to have been placed under suspension;

(ii) if the Government servant is not "deemed" to have been under suspension as envisaged under (i) above, the payment of full pay and allowances for the intervening period and treatment of that period as duty for all purposes will be automatic and compulsory, provided

that where the reinstated Government servant has secured employment during any period between the dismissal/removal/discharge/termination and reinstatement, the pay and allowances admissible to him after reinstatement for the intervening period shall be reduced by the emoluments earned by him during such employment if such pay and allowances exceed such emoluments. If the pay and allowances admissible to him are equal to or less than the emoluments earned by him nothing shall be paid to him;

provided that the amount to be paid under (i) and (ii) above will be determined subject to the directions, if any, in the decree of the court regarding arrears of salary."

Now it is to be seen whether the action of the respondents is sustainable in law. Mr Pathak submitted that the action of the respondents cannot be faulted in the absence of a specific direction of the Tribunal in the order dated 8.4.1997 regarding payment of arrear of salaries for the period he was out of duty. He also submitted that it is at the discretion of the competent authority of the respondents whether such amount is to be paid. The respondents had rejected payment by a speaking order. Mr Chanda, on the other hand, submitted that the respondents have disallowed arrears of pay and allowances for the aforesaid period to the applicant under a misconception. The applicant was not deemed to have been under suspension. Therefore, on reinstatement payment of full pay and allowances for the period treated as duty is automatic and compulsory according to para (4) 3(ii) aforesaid. The proviso does not debar the payment of full arrear pay and allowances to the applicant. On the other hand, according to him, only the amount to be paid taking into consideration the circumstances at (ii) above is to be determined under proviso subject to the direction contained in the order of the Tribunal. There was no such circumstances or direction from the Tribunal and therefore the payment of arrear pay and

in allowances has to be made full. Mr Chanda further submitted that there can be no doubt that once the impugned orders were set aside as not sustainable in law and the employee concerned was treated as deemed to be in service, full pay and allowances for the period he was kept out of office are admissible. In support of his contention he relied on the decision in the case of Kewal Krishan Mittal 1984(2) S.L.R 614 (Delhi) in which it was held that if the order of termination is declared null and void and the court makes a declaration to that effect the Government will follow the declaration and pay to the servant his arrears of salary and restore him to the office from which he was dismissed. He further pointed out that in that case the Hon'ble Delhi High Court further held that the logical consequence of the declaration is a right to emoluments and a right to the post. He also relied on Maimoona Khatun vs. State of U.P., AIR 1980 SC 1773 (1777) quoted in the judgment thus :

"It will cause gross and substantial injustice to the employee concerned who having been found by a court of law to have been wrongly dismissed and who in the eye of law would have been deemed to be in service, would still be deprived for no fault of his, of the arrears of his salary."

Mr Chanda further relied on the order of the Tribunal in Sri Rai Singh vs. Union of India & Ors. 1990(1) SLJ (CAT) 637 in which it was held that once the Tribunal has allowed the application and passed orders for reinstatement of the applicant to his old post, he was entitled to be paid all consequential benefits including the pay and allowances for the post and the promotional post even though he had not worked. To counter Mr Chanda's submissions, Mr B.C.Pathak had relied on State of U.P. and another vs. Ved Pal Singh, AIR 1997 SC 608. In that case the employee

was acquitted of criminal charges and was reinstated in service but back wages were disallowed as he was a person of doubtful integrity according to his confidential reports. Mr Pathak could not however show that the facts and circumstances of the case presently under consideration are similar to those of the case relied on by him.

5. For convenience again, the impugned order dated 11.5.1998 is reproduced herein below :

"Consequent upon the reinstatement of Shri Bipul Saikia as Chowkidar in the office of the Director of Census Operations, Assam, vide No.DCO(E)192/92/5673 dt. 3.9.97 following the judgment passed by the honourable Central Administrative Tribunal, Guwahati Bench, Shri Saikia has been paid an amount of Rs.63042.00 (Rupees sixty thousand forty two) only (Out of which Rs.3515.00 was deposited in his G.P.F.) on an undertaking from him as arrear of pay and allowances for the period from 1.1.96 to 30.4.97 in anticipation of Registrar General, India's approval.

But, the office of the Registrar General, India raised an objection to the payment of aforesaid amount on the ground that Shri Saikia is not entitled to the payment of arrears of pay and allowances for the period for which he did not work. It has also been observed that as per the Govt. of India's order under Rule (4)3(i) and 3(ii) under FR 54-B the payment of arrears of pay and allowances are to be determined subject to the directions, if any, in the decree of the Court regarding payment of such arrears. In the absence of such decree in the Hon'ble Court's judgment vide O/A No.242/93 dt. 8.4.97 the payment of arrears of salary was irregular. Legal opinion obtained in this context also supports the view expressed in the above Govt. order.

Shri Saikia is, therefore, directed to refund the entire amount of arrear of Rs. 63042.00 drawn by him within 20th May, 1998 positively."

The applicant was not deemed to be under suspension. According to the aforesaid order (4) 3 (ii) under FR 54-B the payment of full pay and allowances for the intervening period and treatment of that period as duty for all purposes will be automatic and compulsory subject to adjustments as stated therein. The amount to be paid under this order however will

be subject to the directions, if any, in the decree of the Court regarding arrears of salary. In view of the automatic and compulsory nature of the payment the absence of any direction by the Tribunal in the judgment regarding arrears of salary would mean, in my opinion, that full payment as contemplated in the order is not affected by the judgment. Full payment has to be made automatically and compulsorily. It is only when there are directions contained in the order or judgment in a certain manner that full payment ceases to be automatic and compulsory. In that event payment will have to be made only in accordance with the directions. In view of this and the submissions of the learned counsel for the applicant as mentioned above I am of the view that the respondents had without proper consideration of the matter wrongly and illegally issued the impugned order. The impugned order is further illegal as such adverse decisions were taken against the applicant without observing the principle of natural justice inasmuch as no opportunity of hearing was allowed to the applicant before the adverse decisions were taken. In the circumstances the impugned order is not sustainable and the same is hereby set aside. The respondents are directed to re-consider payment of full pay and allowances to the applicant for the period from 21.5.1992 to the date of his joining duties on reinstatement according to rules and law. A speaking order shall be communicated to the applicant by the respondents within 3 months from the date of receipt of this order.

The application is disposed of. No order as to costs.


27.4.2000
(G.L.SANGLYINE)
ADMINISTRATIVE MEMBER